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ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS

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CHIEF CLERK'S OFFICE

COTTONWOOD FARM, INC.
Petitioner

vs.

Case No.: 02-0662

EXELON CORPORATION, and
COM ED. (a division of Exelon Corporation
formerly known as Commonwealth Edison
Company)

Respondent

MOTION FOR SUMMARY JUDGMENT

NOW COMES the Petitioner, COTTONWOOD FARM, INC. (hereinafter referred to as COTTONWOOD) by its attorney, RICHARD H. BALOG, for its Motion For Summary Judgement pursuant to 735 ILCS 5/2-1005 and Supreme Court Rule 191, 5 ILCS 100/5-5 et seq. and Title 83 Chapter I Part 200.10 et seq, and in support thereof states, as follows:

STANDARD OF REVIEW

The underlying policy of summary judgement is to facilitate litigation, "benefits inure not only to the litigants, in the saving of time and expenses, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials." Steel Co. v. Morgan Marshall Industries, Inc., 278 Ill. App. 3d 241,247 (1st Dist. 1996). The purpose of summary judgment is to determine whether there are any genuine issues of material fact. Covin v. Hobart Bros., 156 Ill 2d 166, 169 (1993). Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

I
INTRODUCTION

This action is brought pursuant to Statutes, Rules, and common law unjust enrichment for the return of wrongly billed and wrongly collected monies by COM ED, and unjustly paid by COTTONWOOD. Because of the nature of the billing and the collection, COTTONWOOD is entitled to interest compounded.

II
FACTS

Peter Barenie, General Manager of COTTONWOOD, discovered the incorrect billing by COM ED, and the incorrect payments by COTTONWOOD to COM ED after reviewing their March, 2002 billing. He decided to match the meters and bills for all of the billing and meters on the Cottonwood property; there are a total of eight meters serviced by COM ED on property owned by Cottonwood. Mr. Barenie discovered that meter number 997934674 was not on Cottonwood property, but rather was located on the west side of the residence located at 5S338 Davis Road, Big Rock, Illinois owned Mr. and Mrs. Rick Gum. The property has been owned by them since 1989.

Mr. and Mrs. Gum requested electrical service from COM ED on May 11, 1989 (COM ED docket 02-06620080(0080)). The phone number on the request was 556-3137. The white telephone pages indicate the current telephone number for Mr. and Mrs. Gum is 556-3137 (see Affidavit of Peter Barenie). The Gums executed an agreement for new service on or about November 2, 1989 (Gum dep - Exhibit "B"). Beginning in January of 1990, COM ED submitted bills for service to Mr. and Mrs. Gum. The Gums received three or four bills, and the billing ceased. They contacted COM ED, and the bills resumed. A

short period of time passed, and they received no further bills. (Gum dep - p. 29-31).

Approximately five years ago, Mr. and Mrs. Gum's electrical service was interrupted because of an electrical storm. COM ED, dealing solely with the Gums, fixed the transformer which is located on the Gums property (Gum dep - p. 31 and 32). The Gums received no bills for electrical service on their home from 1990 until March, 2002 (Gum Dep - p. 33). Mr. and Mrs. Gum did not receive a bill from COM ED for a period of twelve years (Gum Dep - p. 34).

The Gums resumed receiving bills for electrical service from COM ED in 2003 (Gum Dep - Exhibit "C"). The statements received by Mr. and Mrs. Gum in 2003 were for the same meter 997934674 as the bills submitted to COTTONWOOD the previous twelve years. (Gum Dep - Exhibit "C") After COTTONWOOD discovered the billing errors, they contacted COM ED at their customer service number 1(847)4-ComEd-1. The customer service representative requested that this call be placed to the Credit Department at 2100 Swift Road, Oak Brook, Illinois 60521, fax number (630)684-2710 attention Angela number 2116.

On or about March 22, 2002 attorney Richard H. Balog acting on behalf of COTTONWOOD submitted certified letters to COM ED at its Chicago address, its DeKalb address, its Oak Brook address, and its Customer Care office in Chicago. Said notice was sent regular mail and certified mail and formally demanded the return of the overpayments plus statutory interest. No positive action was taken by COM ED to resolve this problem. COM ED's action or inaction resulted in a Complaint being filed before the Illinois Commerce Commission.

A recapitulation of the unjust billing and respective payments are attached hereto and made a part hereof. Your Petitioner also incorporates by reference the Stipulation of Facts of the parties, the Depositions of Mr. and Mrs. Gum, the Affidavit of Peter Barenie, and an Appendix.

III **REPARATION**

The Petitioner's Complaint is brought pursuant to 220 ILCS 5/9-252, 252.1, 253 and Title 83 Chapter 1, Section 280.50, 75, and 76. Each of these statutes and rules encompasses unjust charges, refunds for overcharges, and refunds. Section 280.50 establishes the rules for taking applications; it articulates the procedure for taking applications for service by telephone from third parties; the utility must verify the third party or user application; it is analogous to the instant case.

COTTONWOOD did not ever own, operate, lease, or was in any way involved with the property located at 5S338 Davis Road, Big Rock Township, Illinois.

Thrasher vs. Commonwealth Edison Company, 159 Ill 3rd 1076, 513 NE 2nd 460, 112 Ill Dec 46, (1st Dist - 1987), stated unequivocally that courts have consistently focused on the nature of relief sought rather than on the Plaintiff's basis for seeking the relief. Where the essence of the claim is that a utility is charged too much for the service provided, the claim is for reparations. Village of Evergreen Park vs. Commonwealth Edison Company, 296 Ill App 3rd 810, 695 NE 2nd 1339, 231 Ill Dec 220, (1st Dist - 1998), stated "whatever the Plaintiff may seek to turn the amount paid the Defendant, the amount constituted a 'charge' or 'rate' within the meaning of section 72 (now sections 9-252 and 9-

252.1) and her claim is for reparation within its meaning as well."

Thus, whatever you call the unjust payments made by COTTONWOOD to COM ED, these payments fall under 9/252 and 9/252.1.

IV **UNJUST ENRICHMENT**

An action is maintainable in all cases where one party has received a benefit which would be inequitable for that party to retain. This is based upon the principle that no person shall enrich himself at another's expense. Dickerson Realtors, Inc. vs. Frewert, 16 Ill App 3rd 1060, 307 NE 2nd 445 (2nd Dist - 1974).

V **INTEREST**

Both 220 ILCS 5/9-252 and 252.1, grant the victim of an overcharge or payment of an excessive or unjust amount are entitled to interest at the legal rate from the date of the payment. The question before this tribunal is whether the interest shall be simple or compounded. In People vs. Illinois Commerce Commission, 561 NE 2nd 711, 149 Ill Dec 341, 202 App 3rd 917 (1st District 1990), the court treated the refund as the equivalent of a customer deposit on hold with the utility, and as such the customer was entitled to compounded interest from the date of the deposit.

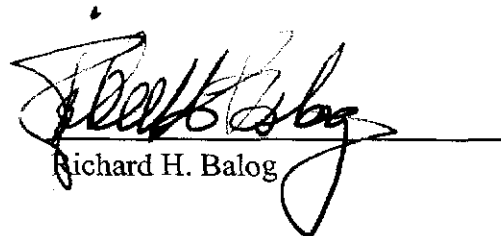
CONCLUSION

The facts before this Tribunal are very simple. COTTONWOOD FARM, INC. never owned or had any interest whatsoever in the property owned by Rick and Dorothy Gum at 5S338 Davis Road, Big Rock Township, Illinois. At some point in 1980, COM ED transferred the billing for the electrical service at the Gums' residence to COTTONWOOD.

COTTONWOOD never received any benefit from COM ED; they received no electrical service. As a result of the actions of COM ED, COTTONWOOD paid the sum of \$18,182.03 to COM ED. COTTONWOOD never contracted for the service at the Davis Road property.

The Billing by COM ED was unjust, and COTTONWOOD was overcharged. The payments made by COTTONWOOD must be refunded with compound interest from the date of each payment. COTTONWOOD paid for which they did not contract.

WHEREFORE COTTONWOOD FARM, INC. prays that this Honorable Tribunal determine and adjudicate the rights and liabilities of the parties hereto and enter an Order of Summary Judgment on COTTONWOOD's behalf on all issues and for such other and further relief as in the premises this Court shall deem meet and just.



Richard H. Balog

RICHARD H. BALOG, 104345
Attorney at Law
111 East Side Drive
Geneva, IL 60134
630/208-6868

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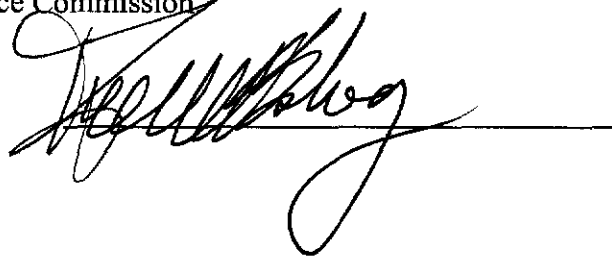
Ms. Elizabeth Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capital Ave.
Springfield, IL 62701

Michael S. Pabian
105 Dearborn
35th Floor
Chicago, IL 60603

Illinois Commerce Commission
Public Utilities Law Division
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104

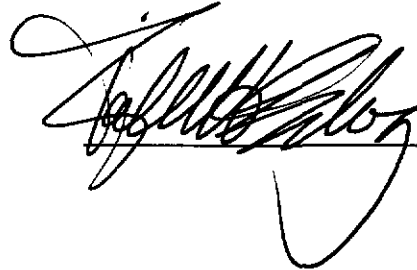
PROOF OF FILING

On August 19, 2003, I have caused the attached Motion for Summary Judgment to be
filed with the Chief Clerk of the Illinois Commerce Commission

A handwritten signature in black ink, appearing to read "Michael S. Pabian", is written over a horizontal line.

PROOF OF SERVICE

The undersigned certifies that a the foregoing Motion for Summary Judgment was served upon the Illinois Commerce Commission and attorney for Exelon Corporation to the above cause by enclosing the same in an envelope and addressed to such Attorney at his last known business address, with postage fully prepaid and by depositing said envelope in a United States Post Office Mail Box in Geneva, Illinois on the 19th day of August, 2003.



Signed and Sworn to before me this
___ day of August, 2003.

Notary Public

RICHARD H. BALOG, 104345
111 East Side Dr.
Geneva, IL 60134
(630) 208-6868